there. *Westaway* v. *Chicago, etc. Ry. Co.*, 56 Minn. 28, 57 N. W. 222; *Burns* v. *North Chicago Rolling Mill Co.*, 65 Wis. 312, 27 N. W. 43. The court recognizes this rule, but distinguishes the principal case on the ground that the train itself does the injury, while in this case not the blasting but the horse causes it. This distinction, even if true, goes only to the issue of legal cause, one of fact, whereas the difficult point is whether or not the defendant violated a duty. No satisfactory distinction is perceived, and if the railroad cases are right, the propriety of the decision in the principal case may well be doubted. There is, however, a tendency to limit the rule strictly to cases of the crossing-signal type. *O'Leary* v. *Erie R. Co.*, 51 N. Y. App. Div. 25, 64 N. Y. Supp. 511.

SALES — RISK OF LOSS — CONDITIONAL SALES. — The plaintiff sold the defendant a piano, title to remain in the seller till the price was paid. On the buyer's default after a portion of the price had been paid, the seller replevied the piano. Before termination of the suit the piano was destroyed without fault of the plaintiff. *Held*, that the defendant is not entitled to a return of the payment made. *Hollenberg Music Co.* v. *Barron*, 140 S. W. 582 (Ark.).

By the weight of authority a retaking of the property on default of the buyer precludes any right to the unpaid purchase price. *Rodgers* v. *Bachman*, 109 Cal. 552, 42 Pac. 448; *Perkins* v. *Grobben*, 116 Mich. 172, 74 N. W. 469. But it allows the seller to retain payments already made, since that was the bargain entered into. *Angier* v. *Taunton Paper Mfg. Co.*, 1 Gray (Mass.) 621. It seems obvious that in this state of the law a destruction of the property could not affect the rights of the parties. A conditional sale, however, should be treated as a mortgage by the buyer to the seller. Consequently the seller should be allowed to retake the property and sue for the purchase price. See WILLISTON, SALES, § 579. This has been allowed even when the seller has resold at a loss. *Dederick* v. *Wolfe*, 68 Miss. 500, 9 So. 350. It would follow that the buyer should also bear the total loss of the property. The seller, then, having a right to the purchase price, might keep payments already made. This view, adopted by the principal case, more accurately defines the rights of the parties, though in the immediate case the result is the same on either view. Under it the seller is forced to take simply as security, and a situation where he might have both the property and most of the purchase price is avoided.

TAXATION — WHERE PROPERTY MAY BE TAXED — SUCCESSION TAX ON SHARES OF JOINT STOCK COMPANY HELD BY NON-RESIDENT. — The decedent, a resident of New Jersey, owned shares in a joint stock company having its principal office in New York. An appeal was taken from an assessment of the stock at full valuation under the Transfer Tax Law of New York on the ground that it should be limited to that proportion of the value of the stock which the assets located in New York bore to the total assets. *Held*, that the appeal should be allowed. *Estate of Willmer*, 46 N. Y. L. J. 853 (N. Y., Surr. Ct., Nov. 22, 1911).

The transfer of corporation stock held by a non-resident may be taxed by the state of incorporation, for the law of that state is called upon to effect it. *Matter of Bronson*, 150 N. Y. 1, 44 N. E. 707. So the full value of the stock may be taxed, regardless of how much of the corporation's property is outside the state. *Matter of Palmer*, 183 N. Y. 238, 76 N. E. 16. It would seem that shares in a joint stock company organized under the laws of the state should be similarly assessed. Though a joint stock company is not a creature of the state as a corporation is, to transfer a share the law of the state is similarly called upon. *Matter of Jones*, 172 N. Y. 575, 65 N. E. 570. The shares are not simply a proportional interest in partnership property. Though the stock company owns only realty, the shares are personalty. *Pittsburg Wagon Works' Estate*, 204 Pa. St. 432, 54 Atl. 316. But the decision is fair. In the analogous

case of a corporation incorporated in two states, each taxes the transfer of stock only on the proportion of property in its jurisdiction. *Gardiner* v. *Carter*, 74 N. H. 507, 69 Atl. 939. Moreover, the taxing of the transfer of stock in a domestic corporation owning property outside the state may have to be similarly limited under the doctrine that property taxable elsewhere cannot be taxed by the state of incorporation. See *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36.

TRIAL — PROVINCE OF COURT AND JURY — RIGHT OF COURT TO QUESTION WITNESSES. — In the course of a trial for murder the judge questioned several witnesses in order to develop their testimony more fully than the prosecuting attorney had done. *Held*, that this is not error. *State* v. *Keehn*, 118 Pac. 851 (Kan.).

In England it has always been considered the right and duty of the trial judge to question witnesses already on the stand or even to call a new witness when he deems it desirable to bring out the truth more fully. *Coulson* v. *Disborough*, [1894] 2 Q. B. 316. A few American decisions also seem to give him a wide discretion in this matter. *Epps* v. *State*, 19 Ga. 102; *Lefever* v. *Johnson*, 79 Ind. 554. But the tendency in this country has been to restrict the exercise of this discretionary power. *Dunn* v. *People*, 172 Ill. 582, 50 N. E. 137; *Barlow Brothers Co.* v. *Parsons*, 73 Conn. 696, 49 Atl. 205. The principal case shows a wholesome reaction from this narrow policy. See 1 WIGMORE, EVIDENCE, § 784; 4 *id.* § 2484.

TRIAL — VERDICTS — SPECIAL FINDINGS. — In an action for negligence the defense of contributory negligence was interposed. In answer to a question of the court as to whether the plaintiff used due care, the jury answered, "We do not know." On a general verdict for the plaintiff the plaintiff obtained judgment. *Held*, that the judgment should be reversed. *Minor* v. *Stevens*, 118 Pac. 313 (Wash.).

In states where the jury can be required to render special findings the general rule is that a party can insist on a definite answer to interrogatories submitted to the jury. *Atchison, etc. Ry. Co.* v. *Hale*, 64 Kan. 751, 68 Pac. 612. Where the party does not insist on a definite answer, the better view is that a finding such as the one in the principal case is equivalent to a finding adverse to the party having the burden of proof of the issue. *Croan* v. *Baden*, 73 Kan. 364, 85 Pac. 532. *Contra, Darling* v. *West*, 51 Ia. 259, 1 N. W. 531. Contributory negligence is an affirmative defense in Washington. *Spurrier* v. *Front Street Cable Ry. Co.*, 3 Wash. 659, 29 Pac. 346. The decision of the principal case would therefore seem difficult to support.

TRUSTS — CESTUI'S INTEREST IN RES — APPORTIONMENT OF RENT BETWEEN LIFE-TENANT AND REMAINDERMAN. — A lease of trust property was made, by which "rent" was to be paid in a certain sum in cash at the signing of the lease and monthly payments thereafter. *Held*, that the sum paid on signing the lease should not be apportioned in monthly payments throughout the term to the successive *cestuis que trust*. *In re Archambault's Estate*, 81 Atl. 314 (Pa.).

Strictly, the cash payment here is not rent, but something given in addition to it. *Cf. Hatherton* v. *Bradburne*, 13 Sim. 599; *Ardesco Oil Co.* v. *North American Oil and Mining Co.*, 66 Pa. St. 375. See 2 WOOD, LANDLORD AND TENANT, § 445. Such a bonus paid for the privilege of obtaining the lease is a form of casual profits, and the decision appears sound in treating it as income and not *corpus*. A close analogy exists in the fines for renewal of a lease, always considered as income. *Milles* v. *Milles*, 6 Ves. 761. See LEWIN, TRUSTS, 12 ed., 876. And even if we follow the court and treat the payment as rent, it should properly